

November 20, 2013  
OPINION 13-0146

60      LAW OFFICERS- Authority and Jurisdiction

La. R.S. 40:2531

The city of Hammond may not discipline a police officer for his refusal to answer questions during a civil administrative investigation which failed to comply with the minimum standards mandated by La. R.S. 40:2531 (B), otherwise known as the police officer's bill of rights.

Mr. Mayson H. Foster  
Mayor, City of Hammond  
Post Office Box 2788  
Hammond, LA 70404

Dear Mayor Foster:

Our office received your request for an opinion on whether it is permissible for the city of Hammond to discipline a police officer for his refusal to answer questions during an administrative investigation of his conduct when the city later determines that the investigation did not comply with the minimum standards set forth in La. R.S. 40:2531. Louisiana Revised Statute 40:2531, also known as the police officer's bill of rights, applies during administrative investigations and states that when certain types of police employees or law enforcement officers, including municipal police officers, are under administrative investigation which could result in disciplinary action, demotion, or dismissal, the minimum standards set forth in La. R.S. 40:2531 (B) shall apply. The minimum standards applicable during an investigation include:

- the employee or officer being investigated must be informed at the commencement of the interrogation of the nature of the investigation, and the identity and authority of the person conducting the investigation, as well as the identity of all persons present during the interrogation;
- the employee or law enforcement officer must be permitted to make notes;
- the interrogation must be for a reasonable period of time and must allow for reasonable periods for rest and personal necessities;
- the interrogation must be recorded in full, and the transcript available to the employee or officer upon written request;
- the employee or officer has the right to be represented by counsel and shall be granted up to 30 days to secure representation, during which time all questioning must be suspended;
- the employee or officer's representative or counsel must be allowed to offer advice to the employee or officer and make statements on the record regarding any questions asked;

- no statement made by the employee or officer during the course of the administrative investigation is admissible in a criminal investigation;
- investigations must be conducted and completed within the time limits set forth in La. R.S. 40:2531.

In *Marks v. New Orleans Police Department*, the Louisiana Supreme Court considered whether the pre-amendment version of La. R.S. 40:2531 required dismissal of a disciplinary action for failure to comply with the statutory minimum standards.<sup>1</sup> The court noted that the statute did not contain a consequence for noncompliance and held that dismissal of the disciplinary action was not required. In response, the Louisiana Legislature amended La. R.S. 40:2531 by Act 258 of the 2007 Louisiana Legislative Session to add such a consequence for failure to comply with the statutory minimum standards, which is codified in La. R.S. 40:2531 (C):

There shall be no discipline, demotion, dismissal, or adverse action of any sort taken against a police employee or law enforcement officer unless the investigation is conducted in accordance with the minimum standards provided for in this Section. Any discipline, demotion, dismissal, or adverse action of any sort whatsoever taken against a police employee or law enforcement officer without complete compliance with the foregoing minimum standards is an absolute nullity.

The policies and procedures of the Hammond Police Department require cooperation with an administrative investigation. Order 107, Rule VI (B) of the Hammond Police Department Disciplinary Code states:

[p]rior to an interview concerning allegations of administrative violations, the officer shall be advised as follows:

1. The officer can be required to answer all questions directly related to the performance of his official duties or fitness for office;
2. Refusal to comply with an order to answer such questions is a violation of department rules which may subject the officer to further discipline up to and including dismissal.

You have asked whether a police officer may be subject to a separate disciplinary action for his refusal to answer questions during an administrative investigation which did not meet the minimum standards set forth in La. R.S. 40:2531 (B). Although Order 107 Rule VI (B) allows an officer to be disciplined for his refusal to comply with an order to answer questions in an administrative investigation, such discipline is prohibited by La. R.S. 40:2531 (C) if the investigation failed to meet the required minimum standards of La. R.S. 40:2531 (B). Thus, it is the opinion of this office that the city may not discipline a police officer for his refusal to answer questions during an administrative investigation which failed to comply with the minimum standards mandated by La. R.S.

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<sup>1</sup> *Marks v. New Orleans Police Dep't*, 06-0575 (La. 11/29/06), 943 So.2d 1028, 1032-1036; *See also* La. Atty. Gen. Op. No. 08-0052.

40:2531 (B). Of course, nothing prevents the city of Hammond from disciplining an officer for a violation of Order 107 Rule VI (B) when the initial administrative investigation meets the minimum standards mandated by La. R.S. 40:2531 (B).

We hope that this opinion has adequately addressed the questions you have submitted. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY: \_\_\_\_\_  
Emily Andrews  
Assistant Attorney General

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SYLLABUS

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DATE ASSIGNED:

DATE RELEASED: November 20, 2013

Emily Andrews  
Assistant Attorney General